

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based)	
Services to Rural Areas and Promoting)	WT Docket No. 02-381
Opportunities for Rural Telephone Companies)	
To Provide Spectrum-Based Services)	
)	
2000 Biennial Regulatory Review)	WT Docket No. 01-14
Spectrum Aggregation Limits)	
For Commercial Mobile Radio Services)	
)	
Increasing Flexibility to Promote Access to)	WT Docket No. 03-202
And the Efficient and Intensive Use of Spectrum)	
And the Widespread Deployment of Wireless)	
Services, and to Facilitate Capital Formation)	

COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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SUMMARY

The National Telecommunications Cooperative Association (NTCA) submits its comments on behalf of its rural telephone company members. This rulemaking is an important step in this Commission's revision of wireless policies and rules to better promote spectrum-based services for rural America. In adopting its rural regulatory scheme, the Commission must act in accord with Congress's intent. Congress told the Commission in Section 309(j) of the Communications Act to disseminate spectrum licenses to a wide variety of applicants, including specifically rural telephone companies. Rural telcos are also to be given the opportunity to acquire spectrum and provide spectrum-based services. Congress recognized the unique position of rural telephone companies and their ability and desire to provide service to their rural communities. This unique position must also be recognized and considered as the spectrum policies develop as a result of this NPRM.

NTCA encourages the Commission to adopt a presumption that whenever spectrum is to be licensed small geographic areas will be used. This presumption would be rebuttable upon a showing that the spectrum is more appropriately licensed according to, and the public interest better served by, larger license territories. This presumption would put spectrum into the hands of smaller carriers and recognizes that smaller carriers are most likely to serve smaller communities.

If it is determined that large geographic territories are appropriate for licensing, the Commission should adopt a "keep what you use" approach to licensing and build out. After an initial build out period, unused spectrum becomes available for other users. This approach allows for the development of niche services, but does not permit a carrier to hold unused spectrum hostage.

However, when spectrum is to be licensed according to small geographic areas, a substantial service licensing approach is appropriate.

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COMMENTS
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NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in the above referenced proceeding and in response to the Commission's Initial Regulatory Flexibility Analysis (IRFA).¹ NTCA is a not-for-profit association established in 1954. It represents more than 500 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to

¹ In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, WT Docket No. 03-202, *Notice of Proposed Rulemaking*, (released Oct. 6, 2003) . (NPRM)

their communities. All NTCA members are small carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996.²

NTCA applauds the Commission’s efforts in this Notice of Proposed Rulemaking and looks forward to having a dialogue with the Commission to help it develop spectrum policies and auction rules that will better promote service to rural America and provide opportunities for rural telephone companies. NTCA urges the Commission to consider the following: 1) the Commission has a statutory obligation to disseminate spectrum licenses to rural telephone companies; 2) rural telephone companies are uniquely situated to provide quality wireless service to rural areas; 3) rural concerns and needs for spectrum will best be addressed if: i.) there is a presumption that spectrum will be licensed according to small geographic areas, ii.) a “keep what you use” approach is used when large geographic territories are licensed, and iii.) the “substantial service” licensing approach is used when spectrum is licensed according to small geographic areas; and 4) while unlicensed spectrum is being utilized in rural areas, interference concerns make the spectrum unreliable and often unusable.

I. INTRODUCTION

It is clear that rural spectrum issues were a high priority for Congress when it passed the Telecommunications Act of 1996. Congress requires the Commission to encourage the development and rapid deployment of new technologies and services to those residing in rural areas.³ The rural message is reinforced and the role of rural telephone companies is emphasized in Section 309(j)(3)(B) which tells the Commission

² 47 U.S.C. § 153(37).

³ Section 309(j)(3)(A).

to disseminate spectrum licenses to a wide variety of applicants, including specifically rural telephone companies.⁴ Rural telephone companies are again specified in Section 309(j)(4)(D) which requires the Commission to ensure that rural telcos are given the opportunity to acquire spectrum and provide spectrum-based services.

Congress recognized the unique position of rural telephone companies and their ability and desire to provide service to their rural communities. While much of the NPRM focuses on providing service to rural areas, little mention is made of providing spectrum opportunities to the companies most likely to provide that service, the rural telephone companies. The Commission must adopt rules and policies that promote all of the Section 309 objectives. Congress recognized that rural telephone companies required special protections and the Commission must act in accord with Congress' intent. This NPRM provides the Commission with an exciting opportunity to fashion new methods to further the all of the Section 309 objectives.

II. RURAL TELEPHONE COMPANIES ARE UNIQUELY SITUATED TO PROVIDE QUALITY WIRELESS SERVICE TO RURAL AREAS

NTCA's members are a diverse group of telephone companies providing state of the art service in rural America. All NTCA members are headquartered in the locality where they provide service and have strong ties to the community. In most rural communities, the telco is the largest or one of the largest businesses in town. The rural telco's prosperity is tied to the community's prosperity and future. Rural telcos are motivated not only by the bottom line, but also by a civic duty to ensure the viability of their community as this country moves toward a wireless future.

⁴ Section 309(j)(3)(B).

Whether the technology is wired or wireless, certain economic disadvantages persist in rural America. It is more expensive for landline telecommunications providers to serve rural areas than urban areas. Fewer subscribers and lower subscriber density translate into higher per customer costs. Also, certain regions of the nation suffer from unforgiving terrain. These are service obstacles that have proven insurmountable for the large carriers. Rural telephone companies exist because the large carriers were unwilling or unable to serve their communities.

The economics of serving rural communities have not changed. Driven solely by profit, large carriers and smaller carriers without ties to rural communities understandably concentrate their build out efforts on the more profitable urban areas. They must recoup their investment and answer to their stockholders. Rural telephone companies, in contrast, must answer to their communities. If local rural telephone companies are unable to obtain wireless licenses the rural residents may go without service.

Many in the industry may point to competition as the rural solution, but competition for competition's sake may prove disastrous for a rural community. Pushing competition into an area that cannot support multiple providers causes all providers and their subscribers to suffer. If policies are designed to introduce four or five providers of a competing service into an area that can support no more than one or two, there is the substantial risk that all will fail. As the companies struggle for their survival, the customer loses as none of the companies can afford to upgrade service or equipment.

The policies and rules adopted as a result of this NPRM should focus on ensuring that rural communities have access to high quality, modern wireless service. The

Commission should ensure that those companies with ties to the rural communities and a strong commitment to providing quality service have access to spectrum.

III. THE COMMISSION MUST ADOPT A COMPREHENSIVE AND EASILY UNDERSTOOD DEFINITION OF “RURAL” WITHOUT JEOPARDIZING THE SPECIAL PREFERENCES CONGRESS CREATED FOR RURAL TELEPHONE COMPANIES.

As an initial matter, the Commission seeks comment on an appropriate definition of a “rural area” for the policies and rules adopted as a result of this NPRM.⁵ While NTCA has previously advocated the use of RSAs as a definition for rural areas,⁶ it is important that the Commission not adopt a policy that is over-inclusive or under-inclusive for simplicity’s sake. The Commission must perform an in-depth analysis of each proposed definition to ensure that no areas that are truly rural are prohibited from taking advantage of any rural policies adopted in this proceeding, nor that any non-rural areas are included. At the same time, the Commission should strive to harmonize the different definitions of rural within the Commission and with other governmental agencies.

Currently, a company seeking to serve a particular area may qualify for certain programs or advantages because the area is “rural,” but be disqualified for others because the same area is also not rural according to the different definitions. Also, the Commission may determine that certain relief is warranted for rural areas, but its definition of rural for that particular relief may exclude a vast number of areas the

⁵ NPRM, ¶10.

⁶ In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, *Notice of Inquiry*, WT Docket No. 02-381, NTCA Comments (filed Feb. 3, 2003).

Commission actually intends to help.⁷ This situation leads to regulatory arbitrage, uncertainty and unjust results. In order to achieve the goals of this proceeding, it is imperative that the Commission defines a “rural area” correctly. A simple, accurate and somewhat uniform definition of “rural” would best serve to promote the goals of this NPRM.

In any event, the Commission should not adopt a definition of “rural” that conflicts with the Act’s mandate with respect to “rural telephone companies.” Regardless of whether a special definition of “rural” areas is adopted, it is clear that “rural telephone companies” must receive the preferences provided for in Section 309(j)(4)(D) whenever the Commission disperses spectrum in rural areas or anywhere else in the United States. Any new definition of “rural” must coincide with and promote the objectives of Section 309(j)(4)(D).

IV. RURAL CONCERNS AND NEEDS FOR SPECTRUM SHOULD BE A PRIMARY CONCERN WHENEVER SPECTRUM IS LICENSED

Congress enacted Section 309(j) of the Act believing that rural concerns were important enough to deserve special consideration. The Commission should therefore consider rural concerns and needs before any spectrum is licensed.

A. There Should be a Presumption that Spectrum Will be Licensed According to Small Geographic Areas

Whenever spectrum is licensed there should be a presumption in favor of small license territories. This presumption may be rebutted and larger geographic areas used

⁷ See *e.g.*, Independent Telephone and Telecommunications Alliance, NTCA, and Organization for the Promotion and Advancement of Small Telecommunications Companies Emergency Joint Petition for Partial Stay and Clarification, In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No 95-116 (filed Nov. 21, 2003).

for licensing only upon a showing that the spectrum at issue is better suited for, and the public interest is better served by, large geographic territories.

Small license territories enhance the participation and success of small businesses, including rural telephone companies in the competitive bidding process. Small business success subsequently enhances the provision of spectrum-based services to rural areas.

Small license territories are more affordable than large. If small carriers with ties to rural communities can afford spectrum, they will provide spectrum-based service to the rural consumers. Large carriers lack the motivation to serve rural communities. It is more expensive to serve rural areas than urban areas, and the returns on the investment are less. Driven solely by profit, large carriers and smaller carriers without ties to rural communities understandably concentrate their build out efforts on the more profitable urban areas. They must recoup their investment and answer to their stockholders. Rural telephone companies, in contrast, must answer to their communities.

A presumption that spectrum will be licensed according to small geographic territories will force the industry and the Commission to consider the needs of rural communities every time spectrum is licensed. The small carriers' concerns and the needs of rural communities could not be overshadowed by large carriers with mighty national build out plans.

The Commission questions whether partitioning serves the rural need when large license territories are used. Small companies need primary opportunities to acquire spectrum.⁸ There are transaction costs associated with partitioning and disaggregation

⁸ Participants in NTCA's 2003 Wireless Survey indicated that access to spectrum was one of the major barriers to be overcome in the provision of wireless service to their customers. (NTCA Wireless Survey to be released January 2004).

and the rural company is at the mercy of the large carrier to offer or accept a partitioning agreement. Further, large carriers may hold onto spectrum for years in anticipation of selling the spectrum (an intact license is more valuable than a partitioned one), or as they take years to fully develop their business plans. It may well be that a large company may part with unused rural spectrum, but it may be decades before the large carrier definitely determines that the spectrum will go unused. In the meantime, the rural community is left without service. Small license territories virtually guarantees rural service.

Large carriers will argue that large service areas provide economies of scale and reduce the coordination costs. Large service areas also reduced the auction burden on the Commission. Large carriers will also argue, and NTCA concedes, that some spectrum may be more appropriately auctioned according to large service areas or nationally. However, under NTCA's proposal, the presumption that spectrum should be licensed according to small service areas may be rebutted. If the large carriers assert and the Commission agrees that the spectrum is appropriately licensed according to large territories after considering the rural needs and the public interest, large territories will be licensed.

Commission policy should recognize that rural areas will only achieve an acceptable level of service if small carriers are given the opportunity to compete at auction by bidding on small geographic territories.

B. When Spectrum is Licensed According to Large Geographic Territories, the Commission Should Adopt a “Keep What You Use” Approach to Licensing

The Commission questions whether it should adopt a “keep what you use” approach to spectrum licensing.⁹ Under this approach, licensees are given an initial build out period to construct facilities and begin providing service within their licensed geographic service area. At the end of the initial build out period, the licensee is permitted to keep those portions of its licensed area in which it has constructed, while the unconstructed portions of the market become available for licensing to other parties. NTCA submits that this approach is appropriate whenever spectrum is licensed according to large license territories.¹⁰

There are several advantages to this regulatory approach. First and foremost, the “keep what you use” approach frees up spectrum for other potential users. There would also be an additional incentive for large carriers to build out to rural areas in a relatively short period of time. The “keep what you use” approach also encourages large licensees to partition off unserved areas to sell to other carriers. It is financially advantageous for a large carrier to partition and receive compensation for spectrum that would otherwise revert to the public.

The “keep what you use” approach is also consistent with the Commission’s policy of providing licensees with flexibility to provide service to specific areas or to offer niche services. Carriers are permitted to use only what they need and provide service only where they desire. The license isn’t forfeited for failing to meet construction

⁹ NPRM, ¶ 15.

¹⁰ “Large geographic areas” would be defined as Economic Areas or larger.

benchmarks, but the carrier isn't permitted to hold an entire large license area hostage while it provides its niche service to its niche customers.

In all scenarios, the rural consumer benefits from the “keep what you use” regulatory approach.

C. “Substantial Service” Approach is Appropriate When Spectrum is Licensed According to Small Geographic Areas

The Commission questions whether the construction requirements for wireless geographic area licensees should be harmonized so that all such licensees have the opportunity to provide “substantial service” as a means of complying with their construction requirements.¹¹ NTCA agrees that construction requirements that condition license renewal on serving a percentage of the population discourages rural build out and innovation. However, the “substantial service” requirement is appropriate only when spectrum is licensed according to small geographic territories. For large geographic territories, the “keep what you use” approach described above is more appropriate.

The appropriate build out scheme for large versus small license territories is different for a simple reason. Providing “substantial service” in a small geographic area covering a rural territory necessarily involves serving the rural territory. Providing “substantial service” in an area covering many large cities or suburban communities could mean completely ignoring all rural territory indefinitely. Under the “substantial service” approach, licensees need merely show that they provide “substantial service” to either a geographic service area or to the population within the geographic service area within a specific period of time. A large licensee may get its license renewed by serving

¹¹ NPRM ¶ 33.

just a portion of the urban area within its licensed territory. It may provide service to a “substantial” portion of the population, while completely ignoring and providing no service to the vast majority of the license territory, *i.e.*, the rural territory. When spectrum is licensed according to large service areas, the only way to ensure that spectrum will be made available to carriers seeking to serve the rural territory, is to force the large carriers to part with what they are not using.

V. UNLICENSED SPECTRUM IS NOT THE COMPLETE RURAL SOLUTION

In the NPRM the Commission notes that the popularity of unlicensed devices operating under Part 15 of its rules has grown steadily over the past few years. A whopping 38 percent of NTCA’s members who responded to NTCA’s 2003 wireless survey indicated that they are utilizing unlicensed spectrum to provide wireless services.¹² Among the services identified are point-to-point microwave, Wi-Fi, wireless Internet, internal WAN/LAN and T1 backhaul. While interference was not yet cited as a major problem among NTCA members completing the survey, many have indicated that they are seeing more and more interference from unlicensed devices. Therefore, they contend, unlicensed spectrum is not a reliable method of providing wireless service to rural America. NTCA is concerned that the Commission’s proposal to permit carriers to raise power levels in the unlicensed bands without spectrum management will exacerbate interference problems and make the spectrum unreliable and unusable. Despite the costs associated with licensed spectrum, NTCA members indicated they would prefer more

¹² NTCA’s 2003 wireless survey (to be released January 2004).

licensed spectrum to more unlicensed spectrum by a 71% to 29% margin.¹³ The wireless future of rural America rests on the Commission providing small companies with an interest in serving rural areas with primary spectrum opportunities.

VI. CONCLUSION

NTCA is pleased that the Commission opened this proceeding to examine ways to get more wireless service in the hands of Americans living and working in rural areas. It is imperative that the Commission acknowledges that rural telephone companies are uniquely situated and are most likely to provide service in the vast majority of rural areas. The Commission must adopt rules and policies that put spectrum into their hands. Small spectrum license territories and strict build out requirements for wireless licensees as described above are necessary. Wireless license policies that consider rural concerns first and foremost are essential to ensure the future viability of rural America.

Respectfully submitted,

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¹³ *Id.*

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WT Docket No. 02-381, FCC 03-222 was served on this 29th day of December 2003 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Rita H. Bolden
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